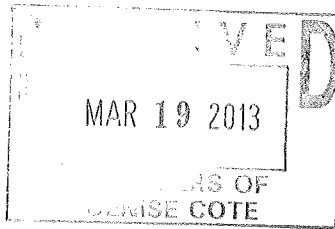


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**MEMO ENDORSE**

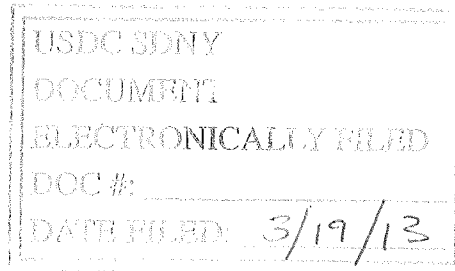
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March 19, 2013

**VIA ELECTRONIC MAIL**

The Honorable Denise L. Cote  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Room 1610  
New York, NY 10007-1312



Re: FHFA v. UBS Americas Inc., et al., No. 11-cv-5201 (S.D.N.Y.) (DLC)

Dear Judge Cote:

We write on behalf of the Federal Housing Finance Agency ("FHFA") in response to UBS's letter dated March 15, 2013 requesting that the Court extend the deadlines for fact and expert discovery in the above-captioned case.

In its Revised Pretrial Scheduling Order ("RPSO"), this Court extended the deadline for fact and expert discovery to August 16, 2013. RPSO (Docket Entry ("D.E.") 278 at 2-3. FHFA has consented to further extend the fact discovery deadline to August 30, 2013 and the expert discovery deadline to September 4, 2013, in response to UBS's request for an extension of the pretrial schedule. Despite FHFA's consent to these extensions, however, UBS continues to demand three additional months for the completion of fact and expert discovery, a request that this Court considered and rejected only a month ago. *See* Feb. 7, 2013 Hr'g Tr. at 31:3-33:19. UBS's application should be denied for the following reasons.

First, UBS cannot show the "good cause" required by Federal Rule of Civil Procedure 16 to justify a change to the current discovery schedule. Fed. R. Civ. P 16(b)(4). UBS's proposal would allow fact and expert discovery to continue until December 6, 2013, nearly three months *after* initial summary judgment briefs are to be filed on September 6, 2013, and more than two months *after* final briefs are due on October 11, 2013. UBS's proposal would prevent the parties from submitting summary judgment motions on the basis of a complete factual record, and prevent the Court from resolving such motions based on that record in advance of the January 13, 2014 trial date. UBS's proposal would also threaten the trial date itself, as it would leave only six weeks between the close of all discovery and the beginning of trial. Indeed, under UBS's proposal, discovery would end on the same day that the parties' Joint Pretrial Order is due, December 6, 2013. RPTO at 3. Far from causing "no burden or harm to FHFA," as UBS posits, UBS's proposal would threaten the timely resolution of FHFA's claims at summary judgment and trial.


Second, UBS's attempt to justify its request to extend the pretrial schedule by pointing to FHFA's document production in the coordinated actions is misplaced. FHFA has produced well over a million documents to date. It has substantially completed its production of all documents from its custodians' files for both the pre-and post-closing time periods. In addition, FHFA has

substantially completed its production of documents from its non-custodial sources, including shared drives and similar document repositories, from the pre-closing time period. FHFA anticipates that it will fully complete production of these documents by the end of March 2013. Further, FHFA has already made a significant production of documents from its non-custodial sources from the post-closing time period, and it anticipates completing the production of such documents by the end of April 2013.<sup>1</sup> In addition, FHFA is prioritizing the production of any remaining documents that relate to individuals that have been noticed for depositions, including the three individuals recently noticed for deposition. FHFA intends to complete production of any given deponent's documents at least one week before that deponent's deposition. In sum, there is nothing about FHFA's production that would deny UBS the opportunity to fully review FHFA's documents in time to depose any of FHFA's witnesses, to submit expert reports starting on July 12, 2013, or to submit opening summary judgment briefs on September 6, 2013.

Third, UBS's effort to justify its request for an extension on its disagreement with other Defendants concerning the timing of noticing depositions of FHFA witnesses is also without merit. Defendants have known for many months that their depositions of FHFA's witnesses would be limited and must be coordinated, requiring them to collaborate on a unified approach to taking those depositions. *See, e.g.*, Order Regarding Deposition Protocol (D.E. No. 280) ¶ I (Nov. 28, 2012). They have also been well aware of this Court's tranching schedule, which requires fact discovery to be completed in the *UBS* action before it is completed in the other coordinated cases. *See, e.g.*, Pretrial Scheduling Order ¶ at 1-3 (June 14, 2012). UBS's apparent failure to collaborate with other Defendants on a discovery strategy hardly constitutes "good cause" to justify UBS's requested extensions.

Accordingly, FHFA respectfully requests that this Court deny UBS's application to extend the fact and expert discovery deadline to December 6, 2013. As evidence of FHFA's continuing efforts to work with Defendants within the parameters set by Your Honor, FHFA consents to extending the fact discovery deadline to August 30, 2013 and the expert discovery deadline to September 4, 2013. Thank you for Your Honor's consideration of this submission.

Respectfully submitted,



Manisha M. Sheth

*All defendants must cooperate in the scheduling of the FHFA (Fannie Mae; Freddie Mac) depositions. The limit on the depositions applies across all actions. The UBS request to extend its discovery until 12/6 is denied. Fact discovery in the UBS action is extended to 8/30/13; expert discovery is extended to 9/4/13.*

<sup>1</sup> FHFA's production estimates do not include certain documents in the *RBS* action, which was coordinated for discovery purposes with the other actions filed in this Court in a Joint Order of November 5, 2012. Joint Order (D.E. 233) (Nov. 5, 2012). Following the entry of that Order, and meet-and-confer sessions with RBS, FHFA agreed to run certain additional searches for documents in that action that were not required in the other actions; FHFA will produce any responsive non-privileged material identified by those additional searches as promptly as possible after completing production of documents in the SDNY actions. In addition, FHFA has preliminarily designated a number of documents both from its custodians' files and from its non-custodial sources as potentially privileged, which it is and has been reviewing. FHFA is designating for production any of these documents that turn out to be responsive but not privileged. FHFA anticipates that its production of any such documents will be completed by or soon after the end of April 2013.

*Yvonne B. Ke  
March 19, 2013*